

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

JAMES TORIGIAN KEARINS (5)

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§

Case No. 4:09cr70  
(Judge Crone)

## **REPORT AND RECOMMENDATION** **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 12, 2013, to determine whether Defendant violated his supervised release.

On November 23, 2009, Defendant was sentenced by the Honorable Marcia A. Crone to seventy (70) months' custody followed by three (3) years of supervised release for the offense of Conspiracy to Possess with Intent to Distribute GHB. On April 2, 2012, Defendant completed his period of imprisonment and began service of his supervised term.

On August 9, 2013, the U.S. Probation Officer filed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following mandatory condition: (1) the defendant shall refrain from any unlawful use of a controlled substance. The petition also alleged a violation of the following standard condition: (1) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician. All other violations were dismissed by the Government.

The petition alleges that Defendant committed the following acts with regard to the remaining violations: (1) On April 12, 2013, April 24, 2013, April 29, 2013, July 9, 2013, August

1, 2013, and August 5, 2013, Defendant submitted urine specimens that tested positive for methamphetamine. On all of these occasions, Defendant either admitted usage and/or the specimens were confirmed positive by Alere Toxicology Services.

Prior to the Government putting on its case, Defendant entered a plea of true to all of the remaining violations. The Court recommends that Defendant's supervised release be modified.

**RECOMMENDATION**

The Court recommends that the District Judge modify Defendant's supervised release. Defendant's supervised release should be modified as follows: (1) Defendant shall return to his drug treatment facility; and (2) Defendant's supervised release shall be extended for an additional twelve (12) months.

After the Court announced the recommended sentence, Defendant agreed to the modification, as did the Government and the Probation Officer.

**SIGNED this 13th day of September, 2013.**

  
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AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE